

LEGISLATURE OF NEBRASKA  
NINETY-SIXTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 959**

Introduced by Dierks, 40

Read first time January 5, 2000

Committee: Agriculture

A BILL

1 FOR AN ACT relating to agriculture; to amend section 81-2,147,  
2 Reissue Revised Statutes of Nebraska, and section  
3 81-2,147.01, Revised Statutes Supplement, 1998; to define  
4 terms; to provide a cause of action for certain crop  
5 damage; to harmonize provisions; to repeal the original  
6 sections; and to declare an emergency.  
7 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 81-2,147, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           81-2,147. Sections 81-2,147 to 81-2,147.11 and sections  
4 3 to 5 of this act shall be known and cited as the Nebraska Seed  
5 Law.

6           Sec. 2. Section 81-2,147.01, Revised Statutes  
7 Supplement, 1998, is amended to read:

8           81-2,147.01. As used in the Nebraska Seed Law:

9           (1) Advertisement means all representations, other than  
10 those on the label, disseminated in any manner or by any means  
11 relating to seed, including farm grain represented as suitable for  
12 sowing, within the scope of the Nebraska Seed Law;

13           (2) Agricultural seed includes the seeds of grass,  
14 forage, cereal, oil and fiber crops, and lawn and mixtures of such  
15 seeds and any other kinds of seed commonly recognized within this  
16 state as agricultural seeds and may include the seed of any plant  
17 that is being used as an agricultural crop when the Director of  
18 Agriculture establishes in rules and regulations that such seed is  
19 being used as agricultural seed;

20           (3) Blend means seeds consisting of more than one variety  
21 of a kind, each in excess of five percent by weight of the whole;

22           (4) Brand means a word, name, symbol, number, or design  
23 to identify seed of one person to distinguish it from seed of  
24 another person;

25           (5) Certifying agency means (a) an agency authorized  
26 under the laws of a state, territory, or possession of the United  
27 States to officially certify seed and which has standards and  
28 procedures approved by the United States Secretary of Agriculture

1 to assure genetic purity and identity of the seed certified or (b)  
2 an agency of a foreign country which is determined by the United  
3 States Secretary of Agriculture to adhere to procedures and  
4 standards for seed certification comparable to those adhered to  
5 generally by certifying agencies under subdivision (a) of this  
6 subdivision;

7 (6) Conditioning means drying, cleaning, scarifying, or  
8 other operations which could change the purity or germination of  
9 the seed and require the seed lot or any definite amount of seed to  
10 be retested to determine the label information;

11 (7) Director means the Director of Agriculture or his or  
12 her designated employee or representative or authorized agent;

13 (8) Dormant seed means viable seeds, other than hard  
14 seeds, which fail to germinate when provided the specified  
15 germination conditions for the kind of seed in question;

16 (9) Flower seed includes seeds of herbaceous plants grown  
17 for their blooms, ornamental foliage, or other ornamental parts and  
18 commonly known and sold under the name of flower or wildflower  
19 seeds in this state;

20 (10) Genetically engineered means the alteration or  
21 production through genetic modification from a donor, vector, or  
22 recipient organism using recombinant deoxyribonucleic acid  
23 techniques;

24 ~~(10)~~ (11) Germination means the emergence and development  
25 from the seed embryo of those essential structures which for the  
26 kind of seed in question are indicative of the ability to produce a  
27 normal plant under favorable conditions;

28 (12) Grower means a landowner personally engaged in

1 growing agricultural crops or a tenant of the landowner personally  
2 engaged in growing agricultural crops or both the owner and the  
3 tenant jointly. Grower includes an individual, partnership,  
4 limited liability company, association, corporation, cooperative,  
5 trust, sharecropper, and other business units, devices, and  
6 arrangements;

7           ~~(11)~~ (13) Hard seed means seeds which remain hard at the  
8 end of the prescribed test period because they have not absorbed  
9 water due to an impermeable seed coat;

10           ~~(12)~~ (14) Hybrid means the first generation seed of a  
11 cross produced by controlling the pollination and by combining (a)  
12 two or more inbred lines, (b) one inbred or a single cross with an  
13 open-pollinated variety, or (c) two varieties or species except  
14 open-pollinated varieties of corn (*Zea mays*). The second  
15 generation and subsequent generations from such crosses shall not  
16 be regarded as hybrids. Hybrid designations shall be treated as  
17 variety names;

18           ~~(13)~~ (15) Inert matter means all matter not seed which  
19 includes broken seeds, sterile florets, chaff, fungus bodies, and  
20 stones as established by rules and regulations;

21           ~~(14)~~ (16) Kind means one or more related species or  
22 subspecies which singly or collectively are known by one common  
23 name, such as corn, oats, alfalfa, and timothy;

24           ~~(15)~~ (17) Labeling includes all labels and other written,  
25 printed, stamped, or graphic representations, in any form  
26 whatsoever, accompanying or pertaining to any seed, whether in bulk  
27 or in containers, and includes representations on invoices;

28           ~~(16)~~ (18) Lot means a definite quantity of seed in

1 containers or bulk identified by a lot number or other mark, every  
2 portion of which is uniform within recognized tolerances for the  
3 factors that appear in the labeling;

4 ~~(17)~~ (19) Mixture, mix, or mixed means seeds consisting  
5 of more than one kind, each present in excess of five percent by  
6 weight of the whole;

7 ~~(18)~~ (20) Mulch means a protective covering of any  
8 suitable material placed with seed which acts to retain sufficient  
9 moisture to support seed germination and sustain early seedling  
10 growth and aids in preventing the evaporation of soil moisture,  
11 controlling weeds, and preventing erosion;

12 ~~(19)~~ (21) Origin means a foreign country or designated  
13 portion thereof, a state, the District of Columbia, Puerto Rico, or  
14 a possession of the United States, where the seed was grown;

15 ~~(20)~~ (22) Other crop seed means seed of plants grown as  
16 crops, other than the kind or variety included in the pure seed, as  
17 established by rules and regulations;

18 ~~(21)~~ (23) Person includes any corporation, company,  
19 society, association, body politic and corporate, community,  
20 individual, partnership, limited liability company, or joint-stock  
21 company or the public generally;

22 ~~(22)~~ (24) Primary noxious weed seeds means the seeds of  
23 the following plants: Canada thistle (*Cirsium arvense*), leafy  
24 spurge (*Euphorbia esula*), musk thistle (*Carduus nutans*), plumeless  
25 thistle (*Carduus acanthoides*), spotted knapweed (*Centaurea*  
26 *maculosa*), diffuse knapweed (*Centaurea diffusa*), and any other  
27 plant designated by the director as a noxious weed pursuant to the  
28 Noxious Weed Control Act. Pursuant to subdivision (1)(c) of

1 section 81-2,147.06, the director may add to or subtract from this  
2 primary noxious weed seeds list;

3 ~~(23)~~ (25) Prohibited noxious weed seeds means the seeds  
4 of plants which are highly destructive and difficult to control in  
5 this state by ordinary good cultural practice, the use of  
6 herbicides, or both and includes field bindweed (*Convolvulus*  
7 *arvensis*), hoary cress (*Cardaria draba*), Russian knapweed  
8 (*Centaurea repens*), johnsongrass (*Sorghum halepense*), Scotch  
9 thistle (*Onopordum acanthium*), morning glory (*Ipomoea purpurea*)  
10 when found in field crop seeds, skeletonleaf bursage (*Ambrosia*  
11 *discolor*), woollyleaf bursage (*Ambrosia tomentosa*), serrated  
12 tussock (*Nassella trichotoma*), and puncturevine (*Tribulus*  
13 *terrestris*). Pursuant to subdivision (1)(c) of section  
14 81-2,147.06, the director may add to or subtract from this  
15 prohibited noxious weed seeds list;

16 ~~(24)~~ (26) Pure live seed means the product of the percent  
17 of germination plus percent of hard or dormant seed multiplied by  
18 the percent of pure seed divided by one hundred. The result shall  
19 be expressed as a whole number;

20 ~~(25)~~ (27) Pure seed means seed exclusive of inert matter  
21 and all other seeds not of the seed being considered as established  
22 by rules and regulations;

23 ~~(26)~~ (28) Record means any and all information which  
24 relates to the origin, treatment, germination, purity, kind, and  
25 variety of each lot or definite amount of seed handled in this  
26 state. Such information includes seed samples and records of  
27 declarations, labels, purchases, sales, conditioning, bulking,  
28 treatment, handling, storage, analyses, tests, and examinations;

1           ~~(27)~~ (29) Restricted noxious weed seeds means the seeds  
2 of plants which are objectionable in fields, lawns, and gardens of  
3 this state but can be controlled by ordinary good cultural  
4 practice, the use of herbicides, or both and includes dodder  
5 (*Cuscuta* spp.), wild mustard (*Brassica* spp.), dock (*Rumex* spp.),  
6 quackgrass (*Elytrigia repens*), pennycress (*Thlaspi arvense*), purple  
7 loosetrife (*Lythrum salicaria*), and horsenettle (*Solanum*  
8 *carolinense*). Pursuant to subdivision (1)(c) of section  
9 81-2,147.06, the director may add to or subtract from this  
10 restricted noxious weed seeds list;

11           ~~(28)~~ (30) Sale in any of its variant forms means sale, to  
12 barter, exchange, offer for sale, expose for sale, move, or  
13 transport, in any of their variant forms, or otherwise supplying;

14           ~~(29)~~ (31) Screenings means the results of the process  
15 which removes, in any way, weed seed, inert matter, and other  
16 materials from any agricultural, vegetable, or flower seed in any  
17 kind of cleaning process;

18           ~~(30)~~ (32) Seizure means a legal process carried out by  
19 court order against a definite amount or lot of seed;

20           ~~(31)~~ (33) Stop-sale order means an administrative order  
21 provided by law restraining the sale, use, disposition, and  
22 movement of a definite amount or lot of seed;

23           ~~(32)~~ (34) Tetrazolium (TZ) test means a type of test in  
24 which chemicals are used to produce differential staining of  
25 strong, weak, and dead tissues, which is indicative of the  
26 potential viability of seeds;

27           (35) Technology use agreement means any form of licensure  
28 of the use by growers of genetically engineered seeds in which the

1 licensing party asserts and retains title to ownership of the  
2 genetically engineered traits of such seeds or crops derived from  
3 such seeds;

4 ~~(33)~~ (36) Treated means that the seed has been given an  
5 application of a substance or subjected to a process or coating for  
6 which a claim is made or which is designed to reduce, control, or  
7 repel disease organisms, insects, or other pests which attack seeds  
8 or seedlings growing therefrom;

9 ~~(34)~~ (37) Variety means a subdivision of a kind which is  
10 distinct, uniform, and stable. For purposes of this subdivision:  
11 (a) Distinct means that the variety can be differentiated by one or  
12 more identifiable morphological, physiological, or other  
13 characteristics from all other varieties of public knowledge; (b)  
14 uniform means that variations in essential and distinctive  
15 characteristics are describable; and (c) stable means that the  
16 variety will remain unchanged in its essential and distinctive  
17 characteristics and its uniformity when reproduced or reconstituted  
18 as required by the different categories of varieties;

19 ~~(35)~~ (38) Vegetable seed includes the seeds of those  
20 crops which are grown in gardens and on truck farms and are  
21 generally known and sold under the name of vegetable or herb seeds  
22 in this state; and

23 ~~(36)~~ (39) Weed seed includes the seeds of any plant  
24 generally recognized as a weed within this state as established in  
25 rules and regulations and includes the primary noxious weed seeds,  
26 prohibited noxious weed seeds, and restricted noxious weed seeds.

27 Sec. 3. The transfer of a genetically engineered trait  
28 from a genetically engineered growing crop, by cross pollination or



1 other means, to a growing crop which is not genetically engineered  
2 may be deemed an injury to the latter for purposes of a cause of  
3 action for destruction or injury to growing crops.

4           Sec. 4. (a) If a variety of a genetically engineered  
5 agricultural, vegetable, or flower seed is licensed for planting or  
6 other use to growers under a technology use agreement, the  
7 licensing party shall be liable to growers of crops which are not  
8 genetically engineered in any cause of action to recover damages  
9 resulting from injury to growing crops described in section 3 of  
10 this act. For purposes of this section, a grower shall not include  
11 a grower who grows both crops which are genetically engineered  
12 crops and crops which are not on land under such grower's common  
13 ownership or management.

14           (b) The licensing party's liability under this section  
15 cannot be transferred or assigned to a grower by license, contract,  
16 or other means.

17           Sec. 5. Damages for injury to growing crops described in  
18 section 3 of this act includes, but is not limited to:

19           (1) Loss of any price premium which would have accrued by  
20 contract or other marketing arrangement to a grower of crops which  
21 are not genetically engineered or price premium which would have  
22 been otherwise reasonably available to such grower through ordinary  
23 commercial channels;

24           (2) Additional transportation, storage, handling, or  
25 related charges or costs incurred by the grower which would not  
26 have been incurred in the absence of such injury; and

27           (3) Any judgment, charge, or penalty which the grower of  
28 crops which are not genetically engineered is liable due to breach

1 of contract for failure to deliver a crop free of genetically  
2 engineered traits or exceeding any tolerances for the presence of  
3 genetically engineered traits.

4           Sec. 6.     Original section 81-2,147, Reissue Revised  
5 Statutes of Nebraska, and section 81-2,147.01, Revised Statutes  
6 Supplement, 1998, are repealed.

7           Sec. 7.     Since an emergency exists, this act takes effect  
8 when passed and approved according to law.